

practice may be properly regarded as incidental to or in conjunction with the farming operations of a particular farmer or farm include the size of the operations and respective sums invested in land, buildings and equipment for the regular farming operations and in plant and equipment for performance of the practice, the amount of the payroll for each type of work, the number of employees and the amount of time they spend in each of the activities, the extent to which the practice is performed by ordinary farm employees and the amount of interchange of employees between the operations, the amount of revenue derived from each activity, the degree of industrialization involved, and the degree of separation established between the activities. With respect to practices performed on farm products (see § 780.147) and in the consideration of any specific practices (see §§ 780.148-780.158 and 780.205-780.214), there may be special factors in addition to those above mentioned which may aid in the determination.

§ 780.146 Importance of relationship of the practice to farming generally.

The inclusion of incidental practices in the definition of agriculture was not intended to include typical factory workers or industrial operations, and the sponsors of the bill made it clear that the erection and operation on a farm by a farmer of a factory, even one using raw materials which he grows, “would not make the manufacturing * * * a farming operation” (see 81 Cong. Rec. 7658; *Maneja v. Waialua*, 349 U.S. 254). Accordingly, in determining whether a given practice is performed “as an incident to or in conjunction with” farming operations under the intended meaning of section 3(f), the nature of the practice and the circumstances under which it is performed must be considered in the light of the common understanding of what is agricultural and what is not, or the facts indicating whether performance of the practice is in competition with agricultural or with industrial operations, and of the extent to which such a practice is ordinarily performed by farmers incidentally to their farming operations (see *Bowie v. Gonzales*, 117 F.

2d 11; *Calaf v. Gonzalez*, 127 F. 2d 934; *Vives v. Seralles*, 145 F. 2d 552; *Mitchell v. Hunt*, 263 F. 2d 913; *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398; *Mitchell v. Budd*, 350 U.S. 473; *Maneja v. Waialua*, supra). Such an inquiry would appear to have a direct bearing on whether a practice is an “established” part of agriculture. The fact that farmers raising a commodity on which a given practice is performed do not ordinarily perform such a practice has been considered a significant indication that the practice is not “agriculture” within the secondary meaning of section 3(f) (*Mitchell v. Budd*, supra; *Maneja v. Waialua*, supra). The test to be applied is not the proportion of those performing the practice who produce the commodities on which it is performed but the proportion of those producing such commodities who perform the practice (*Maneja v. Waialua*, supra). In *Mitchell v. Budd*, supra, the U.S. Supreme Court found that the following two factors tipped the scales so as to take the employees of tobacco bulking plants outside the scope of agriculture: Tobacco farmers do not ordinarily perform the bulking operation; and, the bulking operation is a process which changes tobacco leaf in many ways and turns it into an industrial product.

§ 780.147 Practices performed on farm products—special factors considered.

In determining whether a practice performed on agricultural or horticultural commodities is incident to or in conjunction with the farming operations of a farmer or a farm, it is also necessary to consider the type of product resulting from the practice—as whether the raw or natural state of the commodity has been changed. Such a change may be a strong indication that the practice is not within the scope of agriculture (*Mitchell v. Budd*, 350 U.S. 473); the view was expressed in the legislative debates on the Act that it marks the dividing line between processing as an agricultural function and processing as a manufacturing operation (*Maneja v. Waialua*, 349 U.S. 254, citing 81 Cong. Rec. 7659-7660, 7877-7879). Consideration should also be given to the value added to the product as a result of the practice and whether